

bar. The arguments, your Honor, which I shall urge, I shall address to the court, not wishing to be heard by the jury, or to be attended to by the numerous auditory now present. A question of great importance depends on this decision; much of the public happiness, of the public peace, of the public liberty, depends on the final decision which shall be pronounced on this subject. I entertained doubts at first; but a calm and dispassionate inquiry, and the most temperate investigation and reflection, have led me to believe and to say, that the jury have a right to determine every question which is necessary to determine, before sentence can be pronounced upon the traverser. I contend that the jury have a right to determine whether the writing charged in the indictment to be false, scandalous and malicious, be a libel or not. If this question should be decided in the affirmative by the court, I shall endeavor to convince the jury that it is not a libel, because there is no law in force, under the government of the United States, which defines what a libel is, or prescribes its punishment. It is a universal principle of law, that questions of law belong to the court, and that the decision of facts belongs to the jury; but a jury have a right to determine both law and fact in all cases.

JUDGE CHASE asked *Mr. Hay* whether he meant to extend his proposition to civil as well as criminal cases, and told him that if he did, the law was clearly otherwise.

*Mr. Hay* said he thought the proposition universally true, but it was only necessary for him to prove it to be true in cases of a criminal nature.

JUDGE CHASE again interrupted *Mr. Hay*, and briefly expressed his opinion of the law. *Mr. Hay* folded up and put away his papers, seeming to decline any further argument.

JUDGE CHASE requested him to continue his argument, and added: "Please to proceed, and be assured that you will not be interrupted by me, say what you will."

*Mr. Hay* refused to proceed.

JUDGE CHASE observed, that though he thought it his duty to stop the counsel when mistaking the law, yet he did not